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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,386

03/19/2004

Michael L. Garrison

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03/30/2009

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EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/804,386	<b>Applicant(s)</b> GARRISON ET AL.	
	<b>Examiner</b> DIANE YABUT	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,11,12,15-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) 5-7,15-17 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/30/2009 has been entered. Claims 1-2, 4-8, 11-12, 15-17, and 19-21 are pending in this application. Claims 5-7, 15-17, and 19-21 are withdrawn from consideration.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1, 2, 4, 8, and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by **Gillick et al.** (U.S. Patent No. **6,383,206**).

Claims 1-2: Gillick et al. disclose a method for delivering and deploying an expandable intraluminal device **72**, providing a delivery system comprising an elongate member **30** having proximal and distal ends and defining a lumen, the delivery system further comprising an ancillary delivery device **35** at least partially disposed in the lumen and

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having a means for spacing **66** a portion of the elongate member from a wall surface of a body vessel, and the expandable intraluminal medical device **72** circumferentially disposed about a portion of the elongate member **30** (Figures 8-10). The distal end of the elongate member is inserted into a body vessel **14**, and the distal end of the elongate member is advanced through the body vessel to the desired point of treatment (Figure 8). A portion of the elongate member is spaced from a wall surface of the blood vessel at a point distal to said expandable intraluminal medical device **72** by activating the means for spacing **66** such that an axial portion of the elongate member disposed between a proximal end of the means for spacing and a distal end of the intraluminal medical device is free of contact with the wall surface of the body vessel (Figure 9), wherein spacing a portion of the elongate member includes the expandable intraluminal device, and the expandable intraluminal medical device is deployed from the elongate member while the elongate member has been spaced from a wall surface of the body surface, again by the means for spacing **66**, wherein the deploying step and the spacing step are performed at the same time (Figure 10). Lastly, the elongate member is withdrawn from the body vessel (col. 9, lines 12-14).

Claim 4: Gillick et al. disclose the means for spacing **66** comprising a basket formed from at least two wire members and having expanded and collapsed configurations (Figures 8-11).

Claims 8 and 11: Gillick et al. disclose the delivery system further comprises a sheath **70** circumferentially disposed about the elongate member and movable along the elongate member, and wherein the step of deploying the expandable intraluminal

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medical device comprises retracting the sheath from a position about the expandable intraluminal medical device and the activating the means for spacing also includes retracting the sheath from a position about the means for spacing (Figures 9-10; col. 9, lines 1-7).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Gillick et al.** (U.S. Patent No. **6,383,206**) in view of **Pavcnik et al.** (U.S. Pub. No. **20010039450**).

Claim 12: Gillick et al. disclose the claimed steps except for the expandable intraluminal medical device comprising a venous valve.

Pavcnik et al. teach an intraluminal venous valve **43** that is deployed within a blood vessel and exerts force against the wall of the vessel and provides a partial seal against the wall, while having expandable and collapsible features (Figures 48-49 and page 1, paragraph 6, page 6, paragraph 68, and page 10, paragraph 87). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a prosthetic venous valve device, as taught by Pavcnik et al., to the device of Gillick et al., since it was known in the art that the delivery system may deploy any suitable

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expandable intraluminal medical device for a therapeutic procedure, such as a prosthetic venous valve.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 2, 4, 8, and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734